○ THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE D. APPA RAO

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+ WP No. 222 OF 2006

% Dated 18.03.2006

M/s. A.P. Circle of All India Bharat Sanchar Nigam Ltd. and another

….Petitioners

Vs.

$ The General Manager (Finance) and others

….Respondents

! Counsel for petitioners: M/s. G.Pavan Kumar,

C.P. Ramawamy

^Counsel for Respondents: Mr. S.R. Ashok,

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? Cases referred

241 ITR 20 (AP)

HON'BLE MR. JUSTICE BILAL NAZKI

AND

HON'BLE MR. JUSTICE D.APPA RAO

W.P.NO. 222 OF 2006

Dt. 18.3.2006

Between:

M/s. A.P. Circle of All India Bharat Sanchar Nigam Ltd. and another

…Petitioners

and

The General Manager (Finance) and others

..Respondents.

HON'BLE MR. JUSTICE BILAL NAZKI

AND

HON'BLE MR. JUSTICE D.APPA RAO

W.P.NO. 222 OF 2006

JUDGMENT: (Per Hon'ble Mr. Justice Bilal Nazki)

This writ petition has been filed by A.P. Circle of All India Bharat Sanchar Nigam Ltd. Executives Association and A.P. Circle of BSNL Employees Union. In the writ affidavit filed by Pandu Ranga Rao,

Vice President of A.P. Circle of first petitioner association it is contended that at the All-India level, the first petitioner has over 55,000 members and the A.P. circle has in its rolls about 5,000 members. All the members of both the petitioners were the servants of Government of India under the Ministry of Communications and Information Technology and by the creation of Bharat Sanchar Nigam Ltd. (BSNL for short) they became the employees of BSNL from 1.10.2000. They have members on All-India level as well as A.P. Circle. They seek a declaration by this writ petition that there was no liability on the first respondent to deduct tax at source in terms of Section 192 of the Income Tax Act, 1961 (for short "the Act") in the matter of rent respecting any accommodation provided by the 2nd respondent to the members of the petitioner associations. They also seek a writ of prohibition restraining the first respondent from enforcing the provisions of Section 192 of the Act against the petitioners with regard to a 'non-existing perquisite' and also restraining the respondents 3 and 4 from treating the first respondent as an assessee in default.

It is not disputed that the salaries of the members of the petitioner associations are subject to tax in terms of Section 192 of the Act. 10 to 15% of the members of the petitioner associations have been allotted quarters originally as Government servants and presently they continue to hold as employees of the 2nd respondent. These quarters are allotted as per pay scales and types of quarters as categorized by CPWD norms under the Ministry of Housing and Urban Development, Government of India. Some officials of the same rank are allotted similar type of quarters and are charged same licence fee. No concession is allowed to anyone. As per the rules and service conditions, standard rent or licence fee had been charged by the Department of Telecommunications before the absorption by the 2nd respondent, as such there was no taxable perquisite in the matter of rent in respect of accommodation provided by the Government of India originally. It is further contended that for the same accommodation provided by the BSNL-2nd respondent, a

clarification was issued through GM, (pers-V) by letter No. 1-2/05-PAT (BSNL), dt. 9.6.2005. In this clarification it was stated that if the accommodation is provided by the company whether owned or leased and the rate of recovery for this facility is less than 10% of salary, the difference between 10% of salary and actual amount recovered from the employee is a perquisite. The same communication also contained that after filing of the returns the employees can seek the refund from I.T. authorities and they can also take recourse to legal remedies available in the I.T. Act as well, if they feel aggrieved of the assessment. In response to this letter, the 1st respondent issued a note on 12.12.2005 which reads as under,

> "As per the amendments effected by Finance Bill 2005, if a non-govt. employee is provided with a rent free or concessional accommodation then it is always chargeable to TAX as a perquisite. For the financial year 2005-06, 20% of salary in respect of the period during which the accommodation is occupied by the employeE is to be taken as perquisite after deducting the licence fee paid by the employee. As such, the recovery of Income Tax is being effected with effect from The pay and allowances from the month of November, 2005 from the non-govt. employees who are in occupation of staff quarters, after taking into account the valuation of accommodation provided by BSNL as perquisite."

This note is now being followed by the drawing and disbursing officers working throughout the State of Andhra Pradesh under the 1st respondent and consequently the tax is being deducted at source by treating the difference between 20% of salary (or 10% of salary, as the case may be) and the standard rent charged in respect of the quarters allotted by the 2nd respondent to the members of the petitioner associations. It is the case of the petitioners that what was not a perquisite as long as the members of the petitioner associations remained as Government servants, has become a perquisite in the eyes of the DDOs by virtue of the clarification letter and note. These

clarifications, according to the petitioner associations, are contradictory to the law declared by this Court in *Steel Executives Association Vs. Rashtriya Ispat Nigam Ltd.* . Therefore they seek quashing of the clarification letter and also the note and further seek a direction that the tax should not be deducted for the perquisite as is being done now.

Counters have been filed by the respondents. In the counter filed by the 3rd respondent it is stated that the writ petition needs to be dismissed on the ground that the rules, as they existed when *Steel Executives Association Vs. Rashtriya Ispat Nigam Ltd.* (1st cited) was decided, have been amended and according to the respondent, under Section 192 of the I.T. Act a person responsible for paying any income chargeable under the head “Salaries” is bound to deduct income tax at the time of payment of salary and in terms of Section 17 the salary includes perquisites and sub-section (2) of Section 17 also defines the perquisite as under,

i. The value of rent free accommodation provided to the assessee by his employer;

ii. The value of any concession in the matter of rent respecting any accommodation provide to the assessee by his employer;

iii. ……

Rule 3 of I.T. Rules has undergone change after judgment in *Steel Executives Association Vs. Rashtriya Ispat Nigam Ltd.* (1st cited). There is no challenge to Rule 3 of the IT Rules as amended, therefore this Court would only go to the question whether in terms of Rule 3 of the IT Rules the impugned clarification and note could have been issued. In order to appreciate the law laid down by the judgment cited supra, it will be necessary to have a look of the Rule 3 as it existed at the time of judgment supra. Rule 3 laid down,

"3. For the purpose of computing the income chargeable under the head "Salaries", the value of perquisites (not provided for by way of monetary payment to the assessee) mentioned below shall be determined in accordance with the following clauses, namely:-

(a) the value of rent free residential accommodation shall be determined on the basis provided hereunder, namely;-

……..

……..

Sub-Rule (a) (ii) of Rule 3 mentions the names of employers who provided accommodation and it includes Reserve Bank of India, Corporation established a Central, State or Provincial Act, company, body or undertaking including a society and it further lays down,

1. "if the accommodation is unfurnished, 10 per cent of the salary due to such person or officer, as the case may be, in respect of the period during which the said accommodation was occupied by him during the previous year; Provided that where the assessee claims and the Assessing Officer is satisfied that the sum arrived at on the aforesaid basis exceeds the fair rental value of the accommodation, the value of the perquisite to the assessee shall be limited to such fair rental value;

2. if the accommodation is furnished, an amount calculated in accordance with sub-clause (ii) (1) plus 10 per cent per annum, of the original cost of the furniture (including television sets, radio sets, refrigerators, other house hold appliances and air-conditioning plant or equipment) or if such furniture is hired from a third party, the actual hire charges payable therefor;"

(b) The value of residential accommodation provided at a concessional rent shall be determined as the sum by which the value computed in accordance with clause (a), as if the accommodation were

provided free of rent, exceeds the rent actually payable by the assessee for the period of his occupation during the relevant previous year."

The amended Rule 3 of I.T. Rules reads as under,

"3. For the purpose of computing the income chargeable under the head "Salaries", the value of perquisites provided by the employer directly or indirectly to the assessee (hereinafter referred to as employee) or to any member of his household by reason of his employment shall be determined in accordance with the following sub-rules, namely:-

(1) The value of residential accommodation provided by the employer during the previous year shall be determined on the basis provided in the Table below,

Sl.No	Circumstances	Where accommodation is unfurnished	Where accommodation is furnished
(1)	(2)	(3)	(4)
(1)	Where the accommodation is provided by the Central Government or any State Government to the employees either holding office or post in connection with the affairs of the Union or of such State or serving with any body or undertaking under the control of such Government on deputation.	Licence fee determined by the Central Government or any State Government in respect of accommodation in accordance with the rules framed by such Government as reduced by the rent actually paid by the employee.	The value of perquisite as determined under Column (3) and increased by 10% per annum of the cost of furniture (including television sets, radio sets, refrigerators, other house hold appliances, air-conditioning plant or equipment) or if such furniture is hired from a third party, the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the employee during the previous year.

(2)	Where the accommodation is provided by any other employer and-(a) where the accommodation is owned by the employer, or	(i) 20% of salary in cities having population exceeding 4 lakhs as per 2001 census;(ii) 15% of salary in other cities, in respect of the period during which the said accommodation was occupied by the employee during the previous year as reduced by the rent, if any, actually paid by the employee.	The value of perquisite as determined under column (3) and increased by 10% per annum of the cost of furniture (including television sets, radio sets, refrigerators, other house hold appliances, air-conditioning plant or equipment or other similar appliances or gadgets) or if such furniture is hired from a third party, by the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the employee during the previous year.
	(b) where the accommodation is taken on lease or rent by the employer	Actual amount of lease rental paid or payable by the employer or 20% of salary whichever is lower as reduced by the rent, if any, actually paid by the employee.	The value of perquisite as determined under column (3) and increased by 10% per annum of the cost of furniture (including television sets, radio sets, refrigerators, other house hold appliances, air-conditioning plant or equipment or other similar appliances or gadgets) or if such furniture is hired from a third party, by the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the employee during the previous year.

(3)	…..	…..	….

From perusal of two sets of rules, it becomes clear that fair rent was a relevant factor in the earlier rules, whereas the fair rent is not at all a factor in terms of the amended rules. Rule 3 (1) (i) applies to the accommodation provided by the Central Government or State Government to the employees and Rule 3 (1) (ii) applies to persons whose accommodation is provided by any other employer and where the accommodation is owned by the employer, the value of the accommodation has to be taken as 20% of salary in cities having population exceeding 4 lakhs as per 2001 census and 15% of salary in other cities. This rules applies to unfurnished accommodation and in case of furnished accommodation, the rate of 20% and 15% shall be increased by another 10%. Since there is no challenge to this rule, therefore this Court cannot ask the respondents 1 and 2 not to do what they are legally bound to do. For this reason alone, we do not find merit in this writ petition which is accordingly dismissed. No costs.

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Dt. 18.3.2006 BNJ

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DARJ

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